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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,594	10/03/2003	Corey S. Maas	021993-000100US	6160

20350 7590 12/31/2007
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ART UNIT	PAPER NUMBER
3773	

MAIL DATE	DELIVERY MODE
12/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFEROENCES

MAILED

DEC 31 2007

GROUP 3700

Application Number: 10/678,594
Filing Date: October 03, 2003
Appellant(s): MAAS ET AL.

M. Henry Heines
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 October 2007 appealing from the Office action mailed 23 July 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Sasaki et al. "Meloplication of the Malar Fat Pads by Percutaneous Cable-Suture Technique for Midface Rejuvenation: Outcome Study" Plastic and Reconstructive Surgery, vol. 110, no. 2 (August 2002), pp. 635-654.

5,964,773	Greenstein	10-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki et al. (Meloplication of the Malar Fat Pads by Percutaneous Cable-Suture Technique for Midface Rejuvenation: Outcome Study; Plastic and Reconstructive Surgery Vol. 110 No. 2, pp. 635-654; August 2002) in view of Greenstein (Patent No. 5,964,773).

Sasaki discloses a surgical device for suspending soft tissue to correct midface ptosis (see entire document) comprising first and second shafts (for example, see Figure 4, two needles). Figure 4 shows the first and second shafts are rigid and straight, and each shaft has a distal end (top portion) and a proximal end (bottom portion). Sasaki discloses first (suspension) and second (tissue-release or braided; pg. 640, fourth paragraph) sutures. Each suture has a first (attached to proximal end of first shaft) and a second (attached to proximal end of second shaft) end. Figure 4 shows an anchor graft attached to the first (suspension) suture. Regarding claim 6, Sasaki discloses the suspension suture is a monofilament suture (PROLENE; pg. 639, third paragraph), and the tissue-release suture is a braided suture (pg. 639, third paragraph and pg. 640, fourth paragraph). Sasaki discloses the ends of the sutures are tied to the proximal ends of the first and second shafts, however, fails to disclose the sutures are fused to the shafts.

Greenstein discloses suture needles (see entire document). Greenstein teaches "fusing" the ends of a suture to a shaft by way of deforming the shaft adjacent the suture and achieving a clamping action on the suture (for example, see column 3, lines 9-12). Regarding claim 3, Greenstein discloses the deformation described above can be achieved by swedging, peening, or any other known adhering methods (for example, see column 3, lines 9-13). Greenstein discloses "fusing", or swedging, a suture to a shaft is done in order to secure the suture to the shaft (column 1, lines 63-65). It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way and to choose from a finite number of identified, predictable solutions, with a reasonable expectation of success. Since it is well known to attach two sutures to the end of a needle, and it is well known to fuse sutures to needles, it would have been obvious to one having ordinary skill in the art at the time the invention was made to try fusing the ends of the sutures to the ends of the shafts of Sasaki's device, by way of swedging as taught by Greenstein, in order to ensure the sutures remain secured to the shafts during use of the device.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Greenstein as applied to claim 1 above, and further in view of Guido (Patent No. 5,342,397).

Sasaki in view of Greenstein discloses a surgical device as described above, however fails to disclose a blunt tip on each shaft. Guido discloses needles attached to sutures that are suitable for use in suturing cutaneous tissues of the body (see entire document). Guido teaches blunt tips on the needles in order to provide maximum safety during a procedure involving tissue penetration, since a blunt tip reduces the probability of skin penetration of a gloved hand of an operator (for example, see column 2, lines 14-24). Therefore, to construct the first and second shafts of Sasaki in view of Greenstein with a blunt tip as taught by Guido would have been obvious to one of ordinary skill in the art at the time the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Greenstein as applied to claim 1 above, and further in view of Bonutti (Patent No. 5,403,348).

Regarding claims 4-5, Sasaki in view of Greenstein discloses a surgical device as described above, wherein the anchor graft is a microporous fluorocarbon polymer (GORE-TEX, pg. 639, third paragraph). However, Sasaki in view of Greenstein fails to disclose a toroidal anchor. Bonutti discloses a suture anchor (see entire document). Bonutti teaches the suture anchor (for example, see Figure 1; element 10) is toroidal (doughnut shaped) in order to facilitate anchor to tissue attachment, which in turn holds the suture firmly in place (column 1, lines 17-19). Therefore, to construct the anchor of Sasaki in view of Greenstein in a toroidal shape as taught by Bonutti would have been obvious to one of ordinary skill in the art at the time the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Greenstein as applied to claim 1 above, and further in view of Yoon (Patent No. 5,849,019).

Sasaki in view of Greenstein discloses a surgical device as described above, however, fails to disclose a manually releasable clamp to receive the first and second ends of one of the sutures. Yoon discloses a manually (column 7, lines 47-49) releasable clamp (Figure 1, element 10) that can receive the first and second ends of a suture (Figure 8) in order to effect a knot for a stitch formed with the suture material (column 6, lines 6-10). Therefore, to construct the device of Sasaki in view of Greenstein with a manually releasable clamp as taught by Yoon would have been obvious to one of ordinary skill in the art at the time the invention was made in order to maintain the suture in place.

(10) Response to Argument

Applicant argues that swedging two sutures to a single rod or needle is neither known nor obvious and that Greenstein fails to address the problem of avoiding a discontinuity between the needle and the suture. Examiner respectfully disagrees. It is well within the general knowledge of one having ordinary skill in the art to use a known technique to improve similar devices in the same way and to choose from a finite number of identified, predictable solutions, with a reasonable expectation of success. Since Sasaki discloses it is well known to attach two sutures to the end of a needle, and Greenstein teaches it is well known to fuse sutures to needles, it would have been obvious to one having ordinary skill in the art at the time the invention was made to try fusing the ends of the sutures to the ends of the shafts of Sasaki's device, by way of swedging as taught by Greenstein, in order to ensure the sutures remain secured to the shafts during use of the device. Furthermore, Greenstein specifically teaches that swedging secures the suture within shaft (for example, see column 1, lines 63-65 and column 3, lines 9-14), and it is well known that fusing sutures to needles prevents detachment.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Melanie Tyson
Melanie Tyson

Conferees:

Jackie Ho

Tom Hughes

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Respectfully submitted,

Melanie Tyson

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